

1
2
3
4
5 EDUARDO I.T., et al.,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 Plaintiffs,

7 v.

8 UNITED STATES OF AMERICA,

9 Defendant.

10
11 Case No. 4:22-cv-05333-DMR

12 STIPULATED PROTECTIVE ORDER

13 1. PURPOSES AND LIMITATIONS

14 Disclosure and discovery activity in this action are likely to involve production of
15 confidential, proprietary, or private information for which special protection from public disclosure
16 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
17 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
18 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
19 or responses to discovery and that the protection it affords from public disclosure and use extends
20 only to the limited information or items that are entitled to confidential treatment under the
21 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
22 this Stipulated Protective Order does not entitle them to file confidential information under seal;
23 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
24 applied when a party seeks permission from the court to file material under seal.

25 2. DEFINITIONS

26 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
27 information or items under this Order.

28 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c) and that are designated confidential by the Producing Party because of a good
2 faith belief that the information is:

3 (a) a trade secret or other confidential research, development, or commercial
4 information as such terms are used in Federal Rule of Civil Procedure 26(c)(1)(G);
5 (b) personal financial, medical or other private information relating to an individual
6 that would properly be redacted from any public court filing pursuant to Federal Rule of Civil
7 Procedure 5.2., including any document, information, or tangible thing protected by the provisions
8 of the Family and Educational Rights and Privacy Act, 20 U.S.C. § 1232g, 34 C.F.R. Part 99;
9 certain individually identifiable health information (defined as health information that is connected
10 to a patient's name, address, Social Security number, or other identifying number, including
11 Health Insurance Claim (HIC) number) that may be subject to the provisions of the Privacy Act, 5
12 U.S.C. § 552a; the provisions of 45 C.F.R. §§ 164.102-164.534 (regulations promulgated pursuant
13 to the Health Insurance Portability and Accountability Act (HIPAA)); or health information for
14 which there may be no waiver by the patient to produce the records to an entity outside one of the
15 Parties;
16 (c) information protected by the provisions of the Privacy Act of 1974, 5 U.S.C § 552a;
17 (d) information contained in individual detainee files (e.g., "A Files") that would be
18 protected by the Privacy Act or any other information or documents that would be covered by the
19 Privacy Act if the subject of the information had been a U.S. citizen or a person lawfully admitted
20 for permanent residence;
21 (e) plaintiffs' administrative claims (Standard Form 95 or "SF-95") and attachments to
22 those claims;
23 (f) sensitive information about Defendant's law enforcement or national security
24 staffing, resources, intelligence and/or methods (including the names and contact information of
25 third parties, and non-supervisory federal and non-federal employees), the release of which to the
26 public may adversely impact identifiable law enforcement or national security interests;
27 (g) information pertaining to applications for asylum or withholding of removal,
28 protection under the Convention against Torture, or claims of credible or reasonable fear, which

1 are subject to disclosure conditions under 8 C.F.R. §§ 208.6, 1003.27(c) and 1208.6(a), as well as
2 information pertaining to: (1) applications for Temporary Protected Status under 8 U.S.C. §
3 1254a; and (2) information that relates to an alien who is the beneficiary of an application for
4 relief under 8 U.S.C. §§ 1101(a)(15)(T), (15)(U), (51) or 1229b(b)(2); and

5 (h) any other information that is protected or restricted from disclosure by Court order,
6 statutes, rules or regulations, including, but not limited to: 8 U.S.C. §§ 1160(b)(5); 1186a(c)(4),
7 1202(f), 1254a(c)(6), 1255a(c)(4), (5); 1304(b), and 1367(a)(2), (b), (c), (d); 22 U.S.C. §
8 7105(c)(1)(C); 8 C.F.R. §§ 208.6, 210.2(e), 214.11(e), 214.14(e), 216.5(e)(3)(viii), 236.6, 244.16,
9 245a.2(t), 245a.3(n), 245a.21, 1003.27(b)-(d), 1003.46, 1208.6, 28 C.F.R. § 0.29f, which
10 otherwise could subject either party to civil or criminal penalties or other sanctions in the event of
11 unauthorized disclosure.

12 (i) To the extent that discoverable information about any Plaintiff is covered by the
13 disclosure of information provisions of 8 U.S.C. §1367(a)(2), the Defendant is ordered to release it
14 to the Plaintiffs, their attorney(s) and related personnel assisting in their case, and any Court
15 involved in this or related proceedings and its personnel as confidential information, despite the
16 limits on disclosure contained in that provision.

17 2.3 Counsel: Counsel of Record for Plaintiffs and Defendant and, for Defendant, Counsel
18 for the applicable federal Departments and Agencies (as well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items that it
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
22 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
23 transcripts, and tangible things), that are produced or generated in disclosures or responses to
24 discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
26 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
27 consultant in this action.

28 2.7 [N/A]

1 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 2.9 [N/A]

4 2.10 Party: any party to this action, including all of its employees, consultants, retained
5 experts, and Counsel of Record (and their support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
9 photocopying, videotaping, translating/interpretation, preparing exhibits or demonstrations, and
10 organizing, storing, or retrieving data in any form or medium) and their employees and
11 subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
13 "CONFIDENTIAL."

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

17 (a) The protections conferred by this Stipulation and Order cover not only Protected
18 Material (as defined above), but also (1) any information copied or extracted from Protected
19 Material; (2) all copies, excerpts, summaries, paraphrases or compilations of Protected Material; and
20 (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal
21 Protected Material. However, the protections conferred by this Stipulation and Order do not cover
22 the following information: (i) any information that is properly in the public domain at the time of
23 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
24 Receiving Party as a result of publication not involving a violation of this Order, including becoming
25 part of the public record through trial or otherwise; and (ii) any information known to the Receiving
26 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
27 who obtained the information lawfully and under no obligation of confidentiality to the Designating
28 Party.

1 (b) This Stipulation and Order applies to discovery and pre-trial proceedings in this
2 action, whether the Protected Material is produced by a party or by a person or entity who is not a
3 party to this action (a “non-party”). This Order binds the parties and their respective agents,
4 successors, personal representatives, and assignees. Any use of Protected Material at trial shall be
5 governed by a separate agreement or order.

6 (c) If the Protected Material contains highly sensitive information, then the Parties may
7 stipulate or the Producing Party may move for the establishment of an additional category of
8 protection (e.g., Attorneys' Eyes Only) that prohibits disclosure of such information in that category,
9 or that limits disclosure only to specifically designated counsel, Party representative(s) whose
10 assistance is reasonably necessary to the conduct of these cases, and who agree to be bound by the
11 terms of the Order provided herein or as revised with respect to such information.

12 (d) The Court finds that this Order is a “qualified protective order” within the meaning of
13 45 C.F.R. § 164.512(e)(1)(v). All patient identifiable information shall be designated “confidential”
14 using the process in Section C of this Protective Order and may be used or disclosed in accordance
15 with the terms of this Protective Order and 45 C.F.R. § 164.512(e)(1)(v).

16 (e) Neither the termination of this action nor the termination of employment of any
17 person who has had access to any Protected Material shall relieve such person of his or her
18 obligations under this Protective Order, which shall survive.

19 | 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

26 || 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
28 Non-Party that designates information or items for protection under this Order must take care to

1 limit any such designation to specific material that qualifies under the appropriate standards. The
2 Designating Party must designate for protection only those parts of material, documents, items, or
3 oral or written communications that qualify – so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept unjustifiably within
5 the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
7 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
8 encumber or retard the case development process or to impose unnecessary expenses and burdens on
9 other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it designated for
11 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
12 that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
14 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
15 Discovery Material that qualifies for protection under this Order must be clearly so designated
16 before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) For information in documentary form (e.g., paper or electronic documents, but
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
20 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
21 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the margins). To the extent
23 that documents produced in other district court actions subject to protective orders entered by those
24 courts (“Other District Court Actions”) are produced in this action, where pages marked
25 “CONFIDENTIAL” in the productions of these Other District Court Actions do not identify the
26 protected portions thereof, the parties shall meet and confer as necessary to address de-designating
27 any “CONFIDENTIAL” markings. Plaintiffs do not waive their rights to challenge the
28 confidentiality designations in specific documents produced from the Other District Court Actions.

1 Any challenges shall be governed by Section 6 of this Order.

2 A Party or Non-Party that makes original documents or materials available for inspection need not
3 designate them for protection until after the inspecting Party has indicated which material it would
4 like copied and produced. During the inspection and before the designation, all of the material made
5 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
6 identified the documents it wants copied and produced, the Producing Party must determine which
7 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
8 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
9 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
10 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
13 Designating Party identify on the record, before the close of the deposition, hearing, or other
14 proceeding, all protected testimony.

15 (c) for information produced in some form other than documentary and for any other
16 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
17 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a
18 portion or portions of the information or item warrant protection, the Producing Party, to the extent
19 practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the Designating Party’s
22 right to secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
24 accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,

1 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 2 confidentiality designation by electing not to mount a challenge promptly after the original
 3 designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 5 by providing written notice of each designation it is challenging and describing the basis for each
 6 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 7 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 8 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 9 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 10 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 11 Party must explain the basis for its belief that the confidentiality designation was not proper and
 12 must give the Designating Party an opportunity to review the designated material, to reconsider the
 13 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 14 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 15 has engaged in this meet and confer process first or establishes that the Designating Party is
 16 unwilling to participate in the meet and confer process in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 18 intervention, the Parties shall follow the procedures for resolving discovery disputes set forth in
 19 Chief Magistrate Judge Donna M. Ryu's standing order and present the dispute in a joint letter to the
 20 court.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 25 the categories of persons and under the conditions described in this Order. When the litigation has
 26 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and in a

1 secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
3 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
4 information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Counsel of Record in this action, as well as employees of said
6 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
7 and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
8 Exhibit A;

9 (b) the employees of the Receiving Party to whom disclosure is reasonably necessary for
10 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) Any person with prior authorized access to the Confidential Information;

12 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A);

15 (e) the court (including any judicial officer to whom this Court may refer this matter for
16 settlement purposes) and its personnel;

17 (f) court reporters and their staff, professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted under this
25 Stipulated Protective Order.

26 (h) the author or recipient of a document containing the information or a custodian or
27 other person who otherwise possessed or knew the information.

28 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER

1 LITIGATION

2 If a Party is served with a subpoena or a court order issued in other litigation that compels
3 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
4 must:

5 (a) promptly notify in writing the Designating Party. Such notification shall include a
6 copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
8 other litigation that some or all of the material covered by the subpoena or order is subject to this
9 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
11 Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the subpoena
13 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
14 before a determination by the court from which the subpoena or order issued, unless the Party has
15 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
16 expense of seeking protection in that court of its confidential material – and nothing in these
17 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
18 disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
20 LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-Party in this
22 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
23 connection with this litigation is protected by the remedies and relief provided by this Order.
24 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
25 protections.

26 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
27 Party’s confidential information in its possession, and the Party is subject to an agreement with the
28 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

(a) Nothing herein shall be deemed or construed as a waiver of any applicable privilege, right of privacy, or proprietary interest with respect to any information or item. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

15 (c) This provision is not intended to modify whatever procedure may be established in an e-
16 discovery order that provides for production without prior privilege review. The parties have,
17 pursuant to Federal Rule of Evidence 502(d) and (e), reached an agreement on the effect of
18 disclosure of a communication or information covered by the attorney-client privilege or work
19 product protection, and that agreement, which the parties concurrently submit to the Court, is
20 incorporated into this stipulated protective order by reference.

21 || 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
23 its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
25 no Party waives any right it otherwise would have to object to disclosing or producing any
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
27 Party waives any right to object on any ground to use in evidence of any of the material covered by
28 this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating Party or a
2 court order secured after appropriate notice to all interested persons, a Party may not file in the
3 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
5 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
6 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
7 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
8 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
9 to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the information in
10 the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

11 12.4 Need to disclose in Open Court. If the need arises for any Party to disclose
12 Confidential Information in a proceeding in open Court or at any hearing or trial, it may do so only
13 after giving notice to the Producing Party, with such notice to be provided in not less than five (5)
14 business days prior to the hearing except upon a showing of good cause. Producing Party, after a
15 good faith effort to meet-and-confer, may seek additional relief from the Court. If the Court
16 schedules a hearing to occur less than five (5) business days from the date the hearing is
17 scheduled, the notice contemplated by this Section shall be accomplished within twenty-four (24)
18 hours, or as soon as practicable. The notice contemplated by this Section for purposes of a Party
19 who asserts the need to disclose Confidential Information at trial may be accomplished by
20 provision of a pre-trial exhibit list and resolution of any objection by the Court at a Pretrial
21 Conference. This Paragraph 12.4 does not apply to filing documents to the docket; such filings are
22 governed by Local Civil Rule 79-5.

23 12.5 Privacy Act. The United States is authorized to produce personal identifying
24 information contained within electronically stored information or hard copy documents. Any
25 electronically stored information or hard copy documents containing such personal identifying
26 information will be deemed Confidential Information, regardless of whether the electronically
27 stored information or hard copy documents are marked with a "CONFIDENTIAL – SUBJECT TO
28 PROTECTIVE ORDER" legend designating the information as Confidential Information.

1 12.6 Applicability to Parties Later Joined. If additional persons or entities become
2 parties to this Action, they must not be given access to any Confidential Information until they
3 execute and file with the Court their written agreement to be bound by the provisions of this
4 Order.

5 13. FINAL DISPOSITION

6 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
7 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
8 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
10 the Protected Material is returned or destroyed, the Receiving Party must submit a written
11 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
12 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
13 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
15 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
18 and expert work product, even if such materials contain Protected Material. Any such archival copies
19 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION). In particular, attorneys for the United States may maintain copies of any
21 documents designated Confidential in their case file for this case, and may maintain copies of any
22 notes or summaries containing such Confidential Information in their case file for this case, subject
23 to 44 U.S.C. § 3101, *et seq.*, and 5 U.S.C. § 552, *et seq.*

24 ///

25

26

27

28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 DATED: August 21, 2023

4 PILLSBURY WINTHROP SHAW PITTMAN
5 LLP

6 */s/ Dustin Chase-Woods*
7 Blaine I. Green
8 Dustin Chase-Woods
9 Ryan Selness
10 Attorneys for Plaintiffs

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
AREA

/s/ Bree Bernwanger
BREE BERNWANGER
Attorneys for Plaintiffs

DATED: August 21, 2023

ISMAIL J. RAMSEY
United States Attorney

/s/ Kelsey J. Helland
Kenneth Brakebill
Kelsey J. Helland
Assistant United States Attorneys

Counsel for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 25, 2023


HONORABLE DONNA M. RYU
Chief Magistrate Judge, U.S. Magistrate Court

United States District Court
Northern District of California

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *EDUARDO I.T., et al. v. UNITED STATES OF AMERICA*, Case No. 4:22-cv-05333-DMR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: